

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

FILED

APR 09 2014

UNITED STATES DISTRICT COURT		District	Western of Texas
Name (under which convicted) Jimmy Torres		Case No.	5:12-cr-00359-OLG
Place of Confinement: FCI Pollock, Louisiana		Prisoner No:	93181-280
UNITED STATE OF AMERICA		V. Jimmy Torres Movant (include name under which convicted)	

-MOTION- SA14CA0320G

- (a) Name and location of court which entered the judgment of conviction you are challenging: United States District Court, Western District of Texas
- (b) Criminal docket or case number (if you know): 5:12-cr-00359-OLG
- (a) Date of the judgment of conviction (if you know): April 4th, 2013
- (b) Date of sentencing: April 4th, 2013
- Length of sentence: 180 months imprisonment, 3-years Supervised Release
- Nature of crime (all counts): 18 U.S.G. § 922(g)(6); 18 U.S.C. § 924(c)(1)
- (a) What was your plea? (Check one)
 

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo Contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilt plea to another count or

What did you plead guilty to and what did you plead not guilty to? N/A
- If you went to trial, what kind of trial did you have? (Check one)
 

July ☐ Judge only ☒

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

☐

If "Yes," answer the following:

N/A

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application. Give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition Yes ☐ No ☐

(2) Second petition Yes ☐ No ☐ \*\*This is the First § 2255\*\*

(d) If you did not appeal from the action on any motion, petition, or application. Explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL BOTH PRE TRIAL, PLEA, AND  
SENTENCING....

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PLEASE SEE FORTHCOMING MEMORANDUM OF POINTS AND AUTHORITIES

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why: CONSTITUTIONALLY

INEFFECTIVE ASSISTANCE OF COUNSEL

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," state:

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue:

Ineffective Assistance of Counsel

GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL BOTH PRE TRIAL, PLEA, AND SENTENCING..

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PLEASE SEE FORTHCOMING MEMORANDUM OF POINTS AND AUTHIORITIES

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective  
Assistance of Counsel

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If you answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue:

Constitutionally Ineffective Assistance of Counsel

GROUND THREE: INEFFECTIVE ASSISTANCE OF COUNSEL, BOTH PRE TRIAL, PLEA AND SENTENCING.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PLEASE SEE FORTHCOMING MEMORANDUM OF POINTS AND AUTHORITIES

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

Name and location of the court where the appeal was filed: N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

## Ineffective Assistance of Counsel

**GROUND FOUR:**

[illegible]

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐



(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," state:

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

None of the grounds presented here have previously been presented to  
any other court because of ineffective assistance of counsel.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the conviction you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the process you are challenging:

(a) At the preliminary hearing: R. Clark Adams, FPD 727 E. Cesar E. Chavez Blvd.  
San Antonio, TX 78205

(b) At the arraignment and plea: Same

(c) At the trial: N/A

(d) At sentencing: Same

(e) On appeal: N/A

(f) In any post-conviction proceeding: "Pro Se"

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:  
N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.<sup>1</sup>

This 28 U.S.C. § 2255 Motion was placed in the hands of prison  
authorities on April 4, 2014, and as such it is deemed timely filed

<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6 provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by government action in violation of the Constitution or laws of the United States is removed, if the Movant was prevented from making such a motion by such government action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presentence could have been discovered through the exercised of due diligence.

CONCLUSION

Therefore Movant asks that the Court grant the following relief: Vacate, Set Aside, or Correct  
Sentence. Any and all other relief to which the Court deems just.

or any other relief to which Movant may be entitled.

x

Signature of Attorney (If any)

CERTIFICATE OF SERVICE/DECLARATION

I declare (or certify, verify, or state) under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is  
~~true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on~~  
April 4, 2014, 2013, with correct United States Postage, pre-paid and affixed thereto, pursuant to  
the mailbox rule announced in *Houston v. Lack*, 108 S. Ct. 2379, 2385, 101 L. Ed. 2d 245 (1988). The rule is  
~~premised on the pro se prisoner's mailing of legal documents through the conduit of "prison authorities whom he~~  
cannot control and whose interests might be adverse to him." *Id.* Petitioner also respectfully requests that this  
Honorable Court liberally construe his pleadings under the standard governing *pro se* submissions  
announced in the Supreme Court's landmark decision *Haines v. Kerner*, 404 U.S. 519, 520, *per curiam*,  
(1972)(Complaints filed by *pro se* litigants are to be construed liberally and are not to be held to the same  
stringent standard as formal pleadings drafted by licensed attorneys.).

Executed (signed) on x 4/4/2014  
(date)

x Jimmy Torres  
Signature of Movant

If the person signing is not Movant, state relationship to Movant and explain why Movant is not signing this motion.